Supreme Court, U.S.
FILED

No. 05-05-387 SEP 22 2005

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In The
Supreme Court of the United States

JEAN LEVINE and NOREEN BOGURSKI,

Petitioners,

v.

UNITED HEALTHCARE CORP. and HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

FRANKLIN P. SOLOMON, ESQUIRE
(*Counsel of Record*)
WEITZ & LUXENBERG, PC
210 Lake Drive East,
Suite 101
Cherry Hill, NJ 08002
(856) 755-1115

DONNA SIEGEL MOFFA, ESQUIRE
TRUJILLO RODRIGUEZ & RICHARDS, LLC
8 Kings Highway West
Haddonfield, NJ 08033
(856) 795-9002

NATALIE FINKELMAN BENNETT, ESQUIRE
SHEPHERD FINKELMAN MILLER & SHAH, LLC
475 White Horse Pike
Collingswood, NJ 08107
(856) 858-1770

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

1. Whether the New Jersey collateral source statute, N.J.S.A. 2A:15-97, which was enacted to eliminate "double recoveries" of insured losses in civil actions and to relieve liability insurers of responsibility for costs covered by health and disability payers, is a State law which regulates insurance and is therefore saved from Federal preemption pursuant to ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A)?

2. Whether plaintiffs' State-law unjust enrichment claims for recovery of monies taken by their health insurers pursuant to unlawful subrogation and reimbursement provisions in their employer-provided health insurance plans should be re-characterized as claims for "benefits due" from the plans within the meaning of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), resulting in Federal jurisdiction over the matters?

LIST OF PARTIES

The parties to the proceedings in the United States Court of Appeals for the Third Circuit are:

Plaintiff-Cross-Appellant-Petitioner Jean Levine;

Defendant-Appellant-Respondent United Healthcare Corp.

Plaintiff-Cross-Appellant-Petitioner Noreen Bogurski;

Defendant-Appellant-Respondent Horizon Blue Cross Blue Shield of New Jersey.

Plaintiff-Cross-Appellant-Petitioner Benjamin Edmonson;

Defendant-Appellant-Respondent Horizon Blue Cross Blue Shield of New Jersey.

The matter captioned Edmonson v. Horizon Blue Cross Blue Shield of New Jersey was dismissed pursuant to an Order of the Court of Appeals for the Third Circuit on November 17, 2004.

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OPINIONS AND ORDERS ENTERED IN THE COURTS BELOW

The March 16, 2005 opinion and judgment of a panel of the Third Circuit Court of Appeals, together with a dissenting opinion, reported at 402 F.3d 156, is reprinted in the Appendix at pages App. 1 through App. 33. The Third Circuit's June 24, 2005 order denying plaintiffs' petition for rehearing or rehearing *en banc* is reprinted in the Appendix at pages App. 146 through App. 148.

The May 28, 2002 opinion and order of the United States District Court for the District of New Jersey, reported at 204 F.Supp.2d 796, 27 Employee Benefits Cas. 2955, is reprinted in the Appendix at pages App. 128 through App. 145. The District Court's opinion and order of July 24, 2002 was not officially reported, but may be found at 2002 WL 31262100 (D.N.J.), 28 Employee Benefits Cas. 2460, and is reprinted in the Appendix at pages App. 118 through App. 127. The District Court's opinion and order of March 4, 2003, reported at 247 F.Supp.2d 596, 30 Employee Benefits Cas. 1014, is reprinted in the Appendix at pages App. 64 through App. 117. The District Court's opinion and order of October 6, 2003, reported at 285 F.Supp.2d 552, 32 Employee Benefits Cas. 1169, is reprinted in the Appendix at pages App. 34 through App. 63.

STATEMENT OF JURISDICTION

Petitioners seek a writ of certiorari to review the March 16, 2005 decision of the United States Court of Appeals for the Third Circuit in *Levine v. United Healthcare Corp.*, 402 F.3d 156 (3d Cir. 2005), *rehearing denied*, June 24, 2005. This Court has jurisdiction to review the

decision of the Court of Appeals pursuant to 28 U.S.C. § 1254(1) on grant of a writ of certiorari upon the petition of any party to the case.

STATUTES INVOLVED IN THE CASE

The New Jersey collateral source statute, N.J.S.A. 2A:15-97, provides:

> **Deduction of duplicate benefits**
>
> In any civil action brought for personal injury or death, except actions brought pursuant to the provisions of P.L.1972, c. 70 (C. 39:6A-1 et seq.), if a plaintiff receives or is entitled to receive benefits for the injuries allegedly incurred from any other source other than a joint tortfeasor, the benefits, other than workers' compensation benefits or the proceeds from a life insurance policy, shall be disclosed to the court and the amount thereof which duplicates any benefit contained in the award shall be deducted from any award recovered by the plaintiff, less any premium paid to an insurer directly by the plaintiff or by any member of the plaintiff's family on behalf of the plaintiff for the policy period during which the benefits are payable. Any party to the action shall be permitted to introduce evidence regarding any of the matters described in this act.[1]

[1] The statute's citation of "P.L.1972, c. 70 (C. 39:6A-1 et seq.)" refers to the New Jersey Automobile Reparation Reform Act, which provides for, *inter alia*, "no-fault" medical benefits in the event of a motor vehicle accident and for insurers' inter-company arbitration of related subrogation claims.

Section 514 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144, provides:

> Other laws
>
> (a) Supersedure; effective date
>
> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.
>
> (b) Construction and application
>
> (1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.
>
> (2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.
>
> (B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance

companies, insurance contracts, banks, trust companies, or investment companies.

Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132, provides, in relevant part:

Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought –

(1) by a participant or beneficiary –

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]